

TORO, COLÓN, MULLET,
RIVERA & SIFRE, P.S.C.

ATTORNEYS AND COUNSELORS AT LAW

UNION PLAZA, SUITE 311
416 PONCE DE LEÓN AVENUE
SAN JUAN, PUERTO RICO 00918-3430

TELEPHONE: (787) 751-8999
TELECOPIER: (787) 763-7760
www.tcmrslaw.com

December 5, 2011

BY E-MAIL

Héctor L. Vélez Cruz, Esq.
velez.hector@epa.gov
Caribbean Environmental Protection Division
US Environmental Protection Agency
Centro Europa Bldg., Suite 417
1492 Ponce de León Ave., Stop 22
San Juan, PR 00907-4127

**Re: In the Matter of: Battery Recycling Company, Inc.
Administrative Order CAA-02-2011-1010**

Dear counsel Vélez:

On October 31st, 2011 representatives from The Battery Recycling Company ("TBRC") and the United States Environmental Protection Agency ("EPA") held a meeting to discuss the matters under the referenced Administrative Order. As part of the discussions and based on subsequent verbal and email discussions, the EPA granted TBRC additional time to submit a supplemental answer addressing Items V, X and XI of the Order. Portions of the response have been already emailed to you. The initial answer to the Order was submitted to the EPA on November 1st, 2011.

Pursuant to the extension of time granted, TBRC hereby supplements the answer to the Order.

Item V

Within 10 days from the effective date of this Order, Respondent shall submit to EPA the results of the 2010 performance tests conducted on the air pollution control devices associated with the Second and Third Furnaces required by 40 C.F.R. § 63.7(g)(1) and the Notification of Compliance Status required by 40 C.F.R. §§ 63.9(h)(2) and 63.549.

EPA alleges in the paragraphs 76(d) and (g) of the Order that TBRC failed to submit to the EPA the results of the performance tests and the Notification of Compliance Status Report ("NOCSR") within 60 days after completion of the performance test conducted after the modification of the existing baghouse system to add 2 compartments and after the installation of the furnace No. 2. EPA is assuming that in every instance a performance test is conducted, that a NOCSR has to be submitted before the agency. As discussed below, no NOCSR was required to

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be submitted after the completion of the modification to the existing baghouse to add two compartments. Nevertheless, after the change was made, BRC conducted a performance test. The test demonstrated that emissions remained unaffected.

In terms of 40 CFR Part 63, the general performance testing requirements, § 63.7(g) provide, in pertinent part, that "[t]he owner or operator of an affected source shall report the results of the performance test to the Administrator before the close of business on the 60th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator (see §63.9(i)). **The results of the performance test shall be submitted as part of the notification of compliance status required under §63.9(h).**" That is, the provision does not state that a NOCSR must be submitted after each performance test, as EPA seems to be interpreting, but merely that the results must be submitted as part of the NOCSR required by the referenced section.

In this regard, please note that §63.9(h) provides the following:

(h) Notification of compliance status. (1) The requirements of paragraphs (h)(2) through (h)(4) of this section apply when an affected source becomes subject to a relevant standard. (2)(i) Before a title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this part, the owner or operator of such source shall submit to the Administrator a notification of compliance status, signed by the responsible official who shall certify its accuracy, attesting to whether the source has complied with the relevant standard. The notification shall list—

(A) The methods that were used to determine compliance;

(B) The results of any performance tests, opacity or visible emission observations, continuous monitoring system (CMS) performance evaluations, and/or other monitoring procedures or methods that were conducted;....

(C) The methods that will be used for determining continuing compliance, including a description of monitoring and reporting requirements and test methods;

(D) The type and quantity of hazardous air pollutants emitted by the source (or surrogate pollutants if specified in the relevant standard), reported in units and averaging times and in accordance with the test methods specified in the relevant standard;

(E) If the relevant standard applies to both major and area sources, an analysis demonstrating whether the affected source is a major source (using the emissions data generated for this notification);

(F) A description of the air pollution control equipment (or method) for each emission point, including each control device (or method) for each hazardous air pollutant and the control efficiency (percent) for each control device (or method); and

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(G) A statement by the owner or operator of the affected existing, new, or reconstructed source as to whether the source has complied with the relevant standard or other requirements.

(ii) The notification must be sent before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in the relevant standard (unless a different reporting period is specified in the standard, in which case the letter must be sent before the close of business on the day the report of the relevant testing or monitoring results is required to be delivered or postmarked). For example, the notification shall be sent before close of business on the 60th (or other required) day following completion of the initial performance test and again before the close of business on the 60th (or other required) day following the completion of any subsequent required performance test. If no performance test is required but opacity or visible emission observations are required to demonstrate compliance with an opacity or visible emission standard under this part, the notification of compliance status shall be sent before close of business on the 30th day following the completion of opacity or visible emission observations. Notifications may be combined as long as the due date requirement for each notification is met...

...

Pursuant to the above, in terms of applicability, §63.9(h) clearly specifies that a NOCSR is required when an affected source becomes subject to a relevant standard.¹ As explained in the comment section of the Final Rule approving the General Provisions, the term “affected source” is established and used to designate the specific “source” or group of “sources”, that is subject to a particular standard. The individual pieces of equipment, processes, production units, or emission points that will be defined as affected sources subject to emission limits or other requirements under the relevant standard will be determined in the development of the standard for the source category or the source. See, 59 Fed. Reg. 12430, March 16, 1994, as amended. Furthermore, “the timing of applicability (i.e., when does an owner or operator become subject to the General Provisions) is determined by when a relevant source category-specific standard is promulgated). The effective date for standards promulgated under sections 112(d), 112(h), and 112(f) of the Act is the date of promulgation. On the date of promulgation of a relevant source category-specific standard, the General Provisions also become applicable to owners or operators subject to the standard for the source category.”

¹ The term “relevant standard” refers to: “(1) An emission standard; (2) An alternative emission standard; (3) An alternative emission limitation; or (4) An equivalent emission limitation established pursuant to section 112 of the Act that applies to the collection of equipment, activities, or both regulated by such standard or limitation. A relevant standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique (including prohibition of emissions) that the Administrator (or a State) establishes for new or existing sources to which such standard or limitation applies...”

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The relevant standard in question, the National Emissions Standards for HAPs from Secondary Lead Smelters, 40 CFR Part 63, Subpart X, was promulgated on June 13, 1997 (62 *Fed. Reg.* 32216). Specifically, § 63.541 provides that the provisions of this subpart apply to the following affected sources at all secondary lead smelters: blast, reverberatory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources. Therefore, the analysis on whether it was necessary to submit a NOCSR before the EPA should begin by determining if an affected source (as defined) became subject to a relevant standard. The NOCSR is to determine compliance with the promulgated relevant standard; that is, if a performance test as part of the initial demonstration of compliance with the relevant standard, then the rule requires that such results be included with the NOCSR.

On the other hand, with regards to the performance testing requirements established in the applicable standard, §§ 63.543(h) (*standards for process sources*) and 63.544(e) (*standards for process fugitive sources*), provide that **“following the initial test to demonstrate compliance with paragraph (a) of this section, the owner or operator of a secondary lead smelter shall conduct a compliance test for lead compounds on an annual basis (no later than 12 calendar months following the previous compliance test).”** Furthermore, “[i]f a compliance test demonstrates a source emitted lead compounds at 1.0 milligram of lead per dry standard cubic meter (0.00044 grains of lead per dry standard cubic foot) or less during the time of the compliance test, the owner or operator of a secondary lead smelter **shall be allowed up to 24 calendar months from the previous compliance test to conduct the next annual compliance test for lead compounds.**” §§ 63.543(i) and 63.544(f).

The above notwithstanding, the EPA is alleging that TBRC failed to submit the results of the performance test and the NOCSR for the Second and Third Furnaces. With respect to the Second Furnace, the EPA clarified in our meeting held on October 31, 2011, that the agency was referring to the installation of a dust collector, which is not part of the equipment defined by Subpart X as being considered an affected source. Thus, a NOCSR was not necessary since the dust collector is not an affected source that becomes subject to a relevant standard.

With regards to the Third Furnace, which is considered as an affected source, the unit was installed after the relevant standard was promulgated. An application for the construction of the newly affected source was filed before the P.R. Environmental Quality Board and the results of the performance test including all relevant information under the applicable standard was also filed before the agency to demonstrate initial compliance. It is our understanding that all the information required by the NOCSR was included in the referenced report. Furthermore, attached to this response is a letter signed by BRC, as requested in our last meeting, certifying such results.

Item X

Within 10 days from the effective date of this Order, Respondent shall submit to EPA and PREQB the bag leak detection alarm logs for July 2009, through the effective date of this Order as required by 40 C.F.R. § 63.550.

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RIVERA & SIFRE, P.S.C.

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The excess semiannual lead emission reports regarding operations at the TBRC's facility for the period of July 2009 through December 2010 were already submitted earlier to EPA.

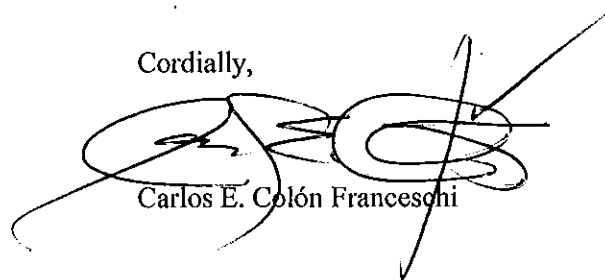
Item XI

Within 45 days from the effective date of this Order, Respondent shall submit to EPA any excess semiannual lead emission reports or summary reports regarding operations at the Facility for the period of July 2009 through the effective date of this Order as required by 40 C.F.R. §§63.10(e)(3)(vi) and 63.550(c).

The excess semiannual lead emission reports regarding operations at the TBRC's facility for the period of July 2009 through December 2010 were already submitted earlier to EPA.

We appreciate your attention to this matter. Should you have any questions or required additional information, please contact the undersigned counsel at (787)751-8999 or ccf@tcmrslaw.com.

Cordially,



Carlos E. Colón Franceschi

Enclosures

c: Eng. Francisco Claudio, EPA-CEPD
Flair Mills, EPA-Region 2
Gaetano Lavigna, EPA-Region 2



PO Box 1016
Arecibo, PR 00613 1016
t: 787 880.5373 f: 787 879.4325

December 2nd, 2011

Héctor L. Vélez Cruz, Esq.
velez.hector@epa.gov
Caribbean Environmental Protection Division
United States Environmental Protection Agency
Centro Europa Building, Suite 417
1492 Ponce de León Ave., Stop 22
San Juan, Puerto Rico 00907-4127

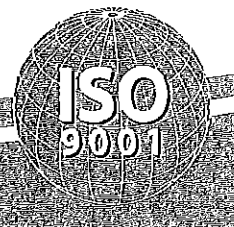
Re: Certification of Notification of Compliance Status Reports
The Battery Recycling Company, Inc.
State Road PR-2, Km. 27.2
Cambalache Ward, Arecibo PR 00612

The facilities subject to the requirements of the National Emission Standards for Hazardous Air Pollutants, 40 C.F.R. Part 63, Subpart X ("Lead Smelter MACT") are required to submit a notification of compliance status report ("NOCSR") pursuant when an affected source becomes subject to a relevant standard. 40 C.F.R. §63.9(h).

On December 17, 2010, TBRC formally notified EPA and PREQB its intention to construct various affected facilities at its secondary lead smelting plant consisting of the installation of an additional rotary furnace and four additional refining kettles with its corresponding control equipment. In the letter, BRC informed EPA of the dates of construction (Attachment A). On December 23, 2009, BRC notified EPA and PREQB of its intention to modify the existing baghouse to add 2 compartments and of the dates that the construction would be finished and of the dates of the emission test for the modified dust collector would be conducted (Attachment B). On May 21st, 2010, BRC informed EPA and PREQB of the unit's startup on June of 2010 and of the date that the performance tests on the new unit would be conducted (Attachment C).

BRC submitted to the EQB and later copied EPA, the results from the performance tests and the opacity emissions observations conducted at the facility on February and June of 2010. Those results were provided in the report format used by our consultants and accepted by both EQB and EPA for all previous tests conducted at the facility. The reports contained all the applicable information required to be included in the NOCSR. The reports prepared by our consultants list and describe the following applicable information required to determine compliance as required under 40 CFR §63.9(h)(A);

- the results of the performance tests, opacity or visible emission observations and/or other methods that were conducted,



Héctor L. Vélez Cruz, Esq.

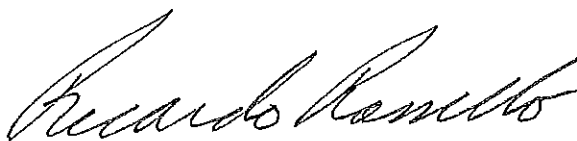
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- the type and quantity of hazardous air pollutants emitted by the source (or surrogate pollutants) reported in units and averaging times and in accordance with the test methods,
- the information demonstrating that the facility continues to be considered a minor source, and,
- a description of the air pollution control equipment (or method) for each emission point, including each control device (or method) for each hazardous air pollutant and the control efficiency (percent) for each control device (or method),

The Administrative Order CAA-02-2011-1010, dated August 9, 2011, alleges that BRC failed to submit a NOCSR after the modification of its baghouse system to add two additional compartments to the existing baghouse system and after the installation of the Furnace No. 2. As discussed previously in our meetings, the NOCSRs (through the February and June of 2010 test reports) were submitted by BRC to EQB, as the entity in which EPA delegated the implementation of the Lead Smelter MACT. A copy was not sent at that time to EPA. Based on the two before mentioned performance tests, BRC demonstrated that the facility was in compliance with the relevant standards after the installation of the additional compartments at one of its two bughouses and of the additional rotary furnace and accompanying refining kettles. The performance tests conducted at the facility demonstrated compliance with the lead and PM MACT and NSPS standards. Face velocity was measured as in compliance with the MACT requirements during previous performance tests.

Hence, as requested by EPA in our past meetings, I, as a responsible official of the above-mentioned facility, amend such reports to certify that based upon information and belief formed after a reasonable inquiry, the information contained in the compliance reports from the tests conducted in February and June 2010 (submitted previously to the EPA) is accurate and true to the best of my knowledge.



Ricardo Rossello
Responsible Officer/CFO

c: Eng. Francisco Claudio, EPA-CEPD
Flair Mills, EPA-Region 2
Gaetano Lavigna, EPA-Region 2
Luis Sierra, PREQB- Director of Air Quality Area